IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2209 OF 1991

Smt. Tilotama Ramkrishna Joshi,
@ Sau. Priya Pandurang Prasade,
residing at House No. 962/1,
Mahatma Gandhi Road, Sangli,
Dist. Sangali. ... Petitioner

Vs.

1. Shri. Maruti Santu Alvekar,
Adult, residing at Yevati,
Tahsil Kervir, Dist. Kolhapur. ... Respondent

Mr. M.V. Apte with Mr. R.S. Apte for Petitioner.

Mr. N.J. Patil for Respondents.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 17, 2005

ORAL JUDGMENT :

1. The Petitioner by the present petition impugns the order dated 21.6.1990 by the President of M.R.T. in Revision Application No. MRT.KP.94.1987 whereby the learned Revisional Authority set aside the order of the Revisional Authority and remanded the matter to Tahsildar in view of what is set out in the body of the judgement.

. A few facts may be set out.

. The Petitioner claims rights in the land as grand daughter of the deceased Smt. Gangabai, widow of Gopal Kulkarni. The subject matters are two properties identified under R.S. No. 252/1 and R.S. No. 263/1. The proceedings arose from an application for purchase made by the tenant/respondents. The learned Tahsildar held that tenant/respondents had not sent or given intimation as required by Section 32F(1A) of the B.T. & A.L. Act on the death of widow. Further finding recorded is tenant was aware of Gangabai's death in the year 1973-74 and that she was residing at Jaisingpur. The Tahsildar held that as a tenant had failed to give intimation, purchase has become ineffective. An issue arose as to whether the landlady Gangabai had title the property. It was held that the property was given to her for maintenance. The learned Tahsildar then held that the tenants be evicted and the possession of the land be restored to landlady.

2. Aggrieved the tenant preferred an appeal being Tenancy Appeal No. 118 of 1986. The appellate authority held that the enquiry had not been conducted properly. As even though an application was made for cross examination of the landlady, no order was passed on the same.

It is also set out that holdings of the landlady had not been ascertained. The appellate authority clearly held that the eligibility of the Respondent Landlady regarding restoration of possession of the suit land must be ascertained with reference to Section 31A of the Act and also that statements of parties must be recorded and accordingly set aside the order of Tahsildar. A Revision came to be preferred against the said order. The learned Revisional Authority noted that Gangabai expired on 13.11.1974 and proceedings under Section 32G were commenced in the year 1978. The landlady by a Will bequeathed the property in favour of grant daughter E.R. Joshi, the revision applicant before it. The learned Revisional Authority considered the arguments advanced on behalf of the Respondents that the properties were allotted to Gangabai vide maintenance deed dated 28.8.1994. The learned authority held that in the maintenance deed, reference was only made to the property bearing R.S. No. 252/1 and there was no reference in so far as property bearing R.S. No. 263/1. The learned Revisional Authority held that the property identified by Survey No. 252/1 is not property of which widow had become full owner. There is nothing on record to show whether R.S. No.

263/1 was willed or whether the revision applicant is a sole L.R. of deceased Gangabai. In so far as properties Survey No. 252/1 is concerned, the learned Revisional Authority held that as Gangabai had not become absolute owner, her three brothers are necessary parties and accordingly held that order of Tahsildar was clearly without jurisdiction and therefore, directed that Tahsildar to hold further enquiry on remand after issuing notices to three brothers and also to consider whether section 32F will be applicable. In so far as property under Survey No. 263/1 is concerned, the learned Revisional Authority held that there is nothing on record to show that the revision applicant can claim property and that claim will have to be investigated by the Tahsildar.

3. At the hearing of this petition, on behalf of the petitioner, it is sought to be contended that finding by the Revisional Authority that Gangabai had not become absolute owner of R.S. NO. 252/1 is clearly without jurisdiction considering the law as declared by the Apex Court in V. Tulasamma and others Vs. Sesha Reddy (Dead) by L.R.s, (1977) 3 Supreme Court Cases 99. The Apex Court in that judgement has clearly held that the property given for

maintenance to a widow on coming into force of Section 42 of the Hindu Succession Act, 1956 would become the exclusive property of the widow. In so far as property in R.S. No. 263/1, it is submitted that Respondent tenant had not at any point of time denied relationship of landlord and tenant.

. On the other hand on behalf of the Respondent tenant, their learned counsel contends that there has not been effective partition and that being the case,it cannot be said that Gangabai had become exclusive owner. Reliance for that purpose is placed on the judgement of the Apex Court in Balkrishna Somnath Vs. Sada Devram Koli and another, AIR 1977 S.C. 894.

4. Having heard learned counsel, the petition can now be disposed off. In so far as property in R.S. No. 252/1 it is submitted that property was given as maintenance to the widow by her brother in laws. By virtue of the provision of Section 14(2) of the Hindu Succession Act as held by the Apex Court in the case of V. Tulasamma and Others (supra) the widow became absolute owner of the property. Once that be the case, her brother in laws are neither necessary or proper parties to the

proceedings.

5. In so far as R.S. No. 263/1 is concerned, it has come on record that tenants had accepted Gangabai as their landlady. Once that be the position, it was not open to the Revisional Authority to go into the issue as to whether Gangabai could claim right in the property. Before Tahsildar, the only issue was of relation of landlord and tenant and the right to purchase and or determination of tenancy. The findings by the learned Revisional Authority therefore, on that count also will have to be set aside.

6. That however, does not answer the issue. For the Petitioner landlord to obtain possession of the property, it will have to be shown that she is entitled to the property and that she does not hold the land in excess of the ceiling as set out under the provisions of the B.T. & A.L. Act. The enquiry therefore, before Tahsildar will have to be limited to that aspect of the matter and to not other issues.

8. In the light of the above, the following order :

. The impugned Judgement dated 21.6.1990 is set

aside. The matter is remanded to Tahsildar for conducting enquiry as to whether the Petitioner landlord is entitled to possession of the property as set out in the earlier part of the judgement.

. Rule made partly absolute accordingly. No order as to costs.

. The Tahsildar is directed to complete the enquiry as early as possible.

(F.I. REBELLO,J.)